

## Migratory Bird Protection

Throughout the Jacksonville District there are numerous unique species of migratory birds. These birds are protected by state and federal laws. A large majority of these birds species are shorebirds and colonial nesting birds. During construction and/or dredging along the waterways, habitat for these birds are affected or created. The Jacksonville District in conjunction with the State of Florida Freshwater Game and Fish Commission, the Audubon Society and the U.S. Fish and Wildlife Service has developed a District wide policy concerning its activities and migratory bird nesting.

### District Policy

#### CESAJ-PD-ES

#### MIGRATORY BIRD PROTECTION POLICY JACKSONVILLE DISTRICT

1. I have reviewed the report for the proposed policy for the protection of migratory birds during construction and maintenance activities within the Jacksonville District.
2. The draft migratory bird policy has been coordinated with all interested parties by letter dated 10 January 1992 and 25 February 1992. After taking into consideration all comments, the policy was revised and the final policy was coordinated with the U.S. Fish and Wildlife Service (USFWS) and the Florida Game and Freshwater Fish Commission (FG&FWFC) by letter dated 8 March 1993. These two agencies not only have expertise in the field but also have regulatory responsibilities under the Migratory Bird Treaty Act and the Florida Threatened and Endangered Species Act. The FG&FWFC responded by letter dated 12 November 1993 commending the District for its efforts in producing a thorough and proactive plan and was looking forward to working with us to solve any unforeseen problems. The USFWS responded by letter dated 19 March 1993 stating that it appreciated the Corps' efforts to protect nesting birds and believed that this policy should reduce conflicts.
3. I hereby authorize the attached [Migratory Bird Protection Policy](#) to be implemented for the State of Florida within the Jacksonville District. This policy will not only be implemented for construction and maintenance projects but also as conditions for permits issued by Regulatory Division where applicable. This policy will also meet the District's responsibilities under the Migratory Bird Treaty Act of 1918 and the Florida Threatened and Endangered Species Act of 1977.

#### TERRENCE C. SALT

Colonel, Corps of Engineers  
Commanding

## MIGRATORY BIRD PROTECTION POLICY

**1.0 AUTHORITY:** The Migratory Bird Treaty Act of 1918, as amended (16 USC 703) protects most migratory bird species as listed by the US Fish and Wildlife Service. The Florida Endangered and Threatened Species Act of 1977, Title XXVIII, Chapter 372.072, provides for the protection of species listed by the State.

**2.0 PURPOSE:** The purpose of this plan is to provide protection to nesting migratory bird species that commonly use the dredged material disposal sites within Jacksonville District while facilitating disposal of dredged material to meet the Federal standard for navigation channel and harbor maintenance as authorized by Congress.

**3.0 PLAN IMPLEMENTATION.** The Plan will consist of four phases: Planning, Implementation, Monitoring, and Mitigation (if necessary).

**3.1 Planning.** The U.S. Army Corps of Engineers (Corps) will develop a dredging and construction schedule which avoids disposal of dredged material into sites used by nesting birds or avoids construction of disposal areas during nesting to avoid potential conflicts between completion of the construction and nesting activities. Should scheduling to avoid the nesting season not be possible or unforeseen construction delays occur, then, a site protection plan (SPP) will be developed detailing how the impacts on the birds will be avoided, minimized, or otherwise mitigated. An advisory committee titled the Migratory Bird Protection Interagency Committee (MBPIC), headed by the Corps and composed of interested parties, will be convened twice a year to review dredging and disposal area construction schedules. (At a minimum the committee will be composed of a representative of the local sponsor, the Corps, U.S. Fish and Wildlife Service and the Florida Game and Freshwater Fish Commission.) If it appears that avoidance of the nesting season is not possible, the SPP will be implemented based on recommendations of the advisory committee. If adverse impacts occur to nesting sites as a result of the project, the MBPIC may recommend appropriate mitigation, based on nesting impacts identified and the requirements of the selected species.

**3.2 Implementation.** The SPP will be included in the Plans and Specifications for the project as a contingency plan should the nesting season not be avoided (Appendix I). The SPP will be implemented when construction occurs between 1 April and 1 September. Monitoring will be a major component of the SPP.

**3.3.1 Monitoring.** In order to assure that migratory bird nesting is being protected and suitable nesting sites have been maintained, an SPP will be implemented should construction extend into migratory bird nesting season. The SPP will be implemented between April 1st and ending September 1st while dredging or construction is underway. After the April 1st date, monitoring for bird nesting behavior will be conducted daily during the construction period. Should nesting behavior be observed, the location, number and type of species would be noted (Appendix I). Nesting success would also be noted during the monitoring period. If incidental take occurs, it will be reported to the

Corps, the USFWS, and the Florida Game and Freshwater Fish Commission (FGFWFC).

**3.3.2 Mitigation.** Should dredge material disposal operations impact important nesting sites, appropriate mitigation actions will be taken.

**3.4 Site Protection Plan Review.** Nesting success of the birds will also be recorded. Should data indicate that nesting success has been negative due to predation, then, the MBPIC will review the monitoring results to determine if future migratory bird protection is necessary at the site. If it is determined that nesting cannot be successful at the site, then the disposal area will be exempted by the USFWS and FGFWFC from further SPP coverage until new information indicates a review by the MBPIC.

**4.0 ALTERNATIVES:** The following alternatives are considered useful in preventing impacts to the nesting birds in order of preference. The No Action alternative, disposal without management consideration for the migratory birds, was not considered. Aside from the protection afforded by Federal and State laws, ignoring this resource would violate the Corps' stewardship responsibilities.

**4.1 Avoidance.** The dredging and disposal will be scheduled to avoid the migratory bird nesting season. This alternative would totally eliminate adversely impacting migratory bird nesting and in some cases would create nesting for selected species such as terns and plovers. This avoidance, in some circumstances, could limit the Corps ability to maintain and/or construct navigation channels, and could result in increased costs to the ports and harbors affected.

**4.2 Creating Undesirable Habitat.** Flooding the disposal area; placing flagging or line over the construction area to discourage bird flight into it; placement of brush, straw, or plastic as ground cover; seeding and/or sodding exposed areas; or disturbing the surface by furrowing the area. Should scheduling not be possible to avoid impacting the birds due to either the length of time required to dredge or from weather or equipment delays, this passive alternative method could make suitable nesting habitat unusable for nesting by physical alteration of the habitat. There could be additional costs from the contracting of labor and for the acquisition of the equipment or products to be used in making the bird nesting habitat undesirable.

**4.3 Dissuasion (Noise generation, activity).** Should scheduling not be possible to avoid impacting the birds due to either the length of time required to dredge or from weather or equipment delays, this active alternative would make otherwise suitable nesting habitat undesirable for nesting by audible and physical activity. There could be additional costs from the contracting of labor and for the acquisition of the equipment, personnel or products to be used. Noise and concussion equipment provides generally short-term dissuasion. Human generated deterrents have proven effective in previous Corps disposal areas. In order to use this alternative, authorization from the US Fish and Wildlife Service and the State of Florida would be necessary to meet the statutory requirements.

**4.4 Alternative Nesting Sites.** Creation of alternate nesting sites outside the construction area is a possible option. Should scheduling not be possible to avoid impacting the birds due to either the length of time required to dredge or from weather or equipment delays, the creation of alternate nesting habitat would allow the birds to find nesting in areas not used for construction. This would require additional costs from the contracting of existing equipment and labor to clear and rake a suitable area prior to nesting season. This alternative would be effective only when implemented in conjunction with the aforementioned alternatives for preventing impacts in disposal areas.

**4.5 Incidental Take.** This alternative would include the incidental taking of birds or their eggs during nesting. In order to use this alternative, authorization from the US Fish and Wildlife Service and the State of Florida would be necessary to meet the statutory requirements. Therefore, this alternative would not be used or authorization sought unless an emergency situation exists which would require completing construction work or performing the necessary dredging.

**5.0 COORDINATION.** Meetings have been conducted in the Jacksonville and Tampa Harbor areas with members of the Port Authorities, the US Fish and Wildlife Service, the Florida Game and Freshwater Fish Commission, the Audubon Society, the Sierra Club (Jacksonville only), and the Florida Inland Navigation District (Jacksonville only). Copies of the draft plans were submitted to these agencies and reviewed (Appendix II). The responses have been considered and incorporated into the final plan.

**6.0 CONCLUSIONS:** Based on all available information, coordination with interested parties and State and Federal agencies having expertise and jurisdiction in the area of migratory birds, and private organizations, we offer the following conclusions: Dredging and construction of disposal areas will be accomplished outside the migratory bird nesting season, if possible. Should work be conducted during nesting season, daily monitoring of the construction site will be conducted to determine if nesting within the site is imminent. Should nesting potentials exist, steps will be taken to make the sites undesirable for nesting until construction, dredging and/or disposal operations are complete. If nesting occurs the contractor, the Contracting Officer, the U.S. Fish and Wildlife Service and the Florida Game and Freshwater Fish Commission will be notified. The Migratory Bird Protection Committee will be informed of the situation so that appropriate coordination and remedial action can be implemented. **7.0 REFERENCES.**

- Bull, John and Farrand, John, Jr. 1977. The American Society Field Guide to North American Birds, Eastern Region.
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- US Fish and Wildlife Service, December 1984. Biological Report 85(15), Tampa Bay Environmental Atlas.
- US Fish and Wildlife Service, June 1986. Biological Report 86(6), Mitigation Options for Fish and Wildlife Resources Affected By Port and Other Water Dependent Developments in Tampa, Florida.
- US Army Corps of Engineers, DOTS Request Memorandum. Management of Disposal Islands in Tampa Bay to Minimize Impacts To Nesting Shorebirds, DOTS Request 92-010. 22 November 1991.
- US Army Corps of Engineers, December 1987. Technical Report DS-78-18, Development and Management of Avian Habitat on Dredged Material Islands.
- US Army Corps of Engineers, December 1987. Technical Report DS-78-19, An Introduction to Habitat Development on Dredged Material. 8.0 LIST OF PREPARERS NAME DISCIPLINE EXPERIENCE ROLE IN PREPARING PLAN
- William J. Fonferek Biologist 14 years environmental impacts assessment Project Manager, Principal Preparer, Biological Impact Assessment
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